IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.778 OF 2005

The State of Maharashtra .. Applicant

Vs.

Bapu N. Bhise .. Respondent

Smt.U.V.Kejriwal, A.P.P. for the State

CORAM : J.N.PATEL &
R.S.MOHITE, JJ.

DATED : 19TH JANUARY, 2007

P.C.:

1. Heard the learned A.P.P.

2. This is an appeal preferred by the State for enhancement of sentence. The respondent was found guilty for having committed offence punishable u.s.307 of the Indian Penal Code and has been sentenced to suffer R.I. for 5 years and pay a fine of Rs.5,000/- by the IInd Ad-hoc Assistant Sessions Judge, Satara by judgment and order dt.17.01.05 passed in Sessions Case No.95 of 2004.

3. It was the prosecution's case that on the day of the incident at about 9 p.m., the accused Bapu visited the house of the complainant, Nanda and told her to vacate the house on which there was a quarrel. The complainant's son Shankar intervened in the quarrel. On this the respondent accused who was having a spade in his hand assaulted her son Shankar who sustained blood injuries on his forehead. He also assaulted the Complainant, Nanda. This was witnessed by independent witnesses who had ran to the spot in response to the call given by Nanda. The appellant accused was charged for having committed offence u.s.307 and 324 of the I.P.C. but the trial court found him guilty u.s.307 of the I.P.C. and convicted and sentenced him.

4. The learned A.P.P. submits that taking into consideration the nature of injuries and that the trial court having found that the respondent was guilty of having committed offence u.s.307 I.P.C., a sentence of 5 years is too lenient and does not subserve the cause of justice and therefore, the discretion exercised by the trial

court is not proper and that the respondent deserves to be sentenced to a term which should act as is deterrent.

5. We have gone through the judgment of the trial court and particularly the concluding para in which the trial court has recorded its finding after hearing the accused on sentence. The trial court has taken into consideration that the incident has taken place out of a quarrel over the issue of getting his house vacated and that he has no criminal antecedents and was earning his livelihood as a labourer. Therefore, in the facts and circumstances, we find that the discretion exercised by the trial court in this backdrop in sentencing the respondent accused for a period of 5 years can be said to be just and proper. Considering the manner in which the offence was committed and the background which led to the incident, we do not find any merits in the appeal seeking enhancement of sentence. Appeal is dismissed.

(SHRI J.N. PATEL, J)

(SHRI R.S.MOHITE, J)